IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4444 OF 2006

Shri Rajendra Prabhakar Tone, .. Petitioner.
vs
1. Shri Mahamad Yasin Mainuddin Shaikh and anr. .. Respondents.

Mr Ashok J.Chougule, for the petitioner.
Mr Anilkumar Patil, for respondent nos. 1 and 2.

CORAM : D.B.BHOSALE,J.
DATE : 09/03/2007

PC:

1. Rule. Returnable forthwith. By consent of the learned counsel for the parties, the petition is taken up for final disposal. Heard the learned counsel for the parties.

2. By this writ petition, the petitioner has impugned an order dated 3.3.2006 passed on MISC.Civil Application No.213 of 2005, by which the petitioner sought condonation of delay in preferring the appeal against the exparte judgment and decree passed in Regular Civil Suit No.180 of 2002 decided on 11.3.2005. I perused the detailed order passed by the court below rejected the application. The conduct of the petitioner as reflected in the order before and after the decree, though is not pardonable, considering the overall facts and circumstances of the case, in the present case a pragmatic view while dealing with the application for

condonation of delay will have to be taken. If the delay is condoned, at the highest, the appeal will have to be decided on merits. In view of the nature of the relief sought in the suit and the decree, that the petitioner will have to suffer, it cannot be said that the delay, in filing the appeal occasioned deliberately or on account of malafide. The petitioner does not stand to benefit by resorting to delay. Keeping that in view and considering overall facts and circumstances of the case, in my opinion, one chance to such litigant, could be given. Hence the following order.

(i) The application for condonation of delay in preferring the appeal against the judgment and order passed in R.C.S.No.180 of 2002 decided on 11.3.2005, stands allowed subject to payment of costs of Rs.1500/- to the respondent by Demand Draft within a period of four weeks from today. If the petitioner fails to pay the costs, as aforestated, his appeal shall stand dismissed without reference to the court. The petitioner to produce a proof of payment in the appeal court within the stipulated time.

(ii) The Appellate Court to decide the appeal on merits within six months from the date of receipt of this order.

(iii) Rule is accordingly disposed of.

(D.B.BHOSALE,J.)